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NEBRASKA ETHANOL BOARD

Roger Berry, Administrator
Nebraska Ethanol Board
P.O. Box 94922
301 Centennial Mall South
Lincoln, Nebraska 68509
OFFICE 402-471-2941
ethanol.nebraska.gov

November 27, 2019

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
Air and Radiation Docket and Information Center
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Docket ID No. EPA-HQ-OAR-2019-0136; FRIL-10001-36-OAR

Dear Administrator Wheeler,

Thank you for the opportunity to provide these comments on the U.S. Environmental Protection Agency's (EPA's) proposed rule on the "Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to the Remand of the 2016 Standards; Supplemental Notice of Proposed Rulemaking" ("supplemental").[1]

The Nebraska Ethanol Board (NEB) is an independent state agency representing Nebraska's ethanol industry, including its producers, employees, farmers and consumers. Nebraska is the nation's number two producer of corn starch ethanol, with 25 ethanol plants capable of producing 2.6 billion gallons of ethanol each year. The state's ethanol plants have a significant impact on Nebraska's economy. They support our communities with stable, excellent-paying jobs, taxes and by helping to build demand for crop farmers throughout the state. In 2017, the ethanol industry supported 5,166 jobs overall, with an average salary of $78,300 annually. This average salary amount is higher than similar jobs in other manufacturing industries and goes a long way in rural Nebraska towns, helping to retain and attract new residents and ensure strong local economies.

As I explain in more detail below, we at the Nebraska Ethanol Board (NEB) do not believe the additional 770 million renewable volume obligations (RVOs) proposed in the supplemental will have the desired effect of immediately restoring confidence that there will be a net ethanol demand next year of at least 15 billion gallons. Without this confidence, it is nearly certain increased biofuels investment and production will continue to be chilled. Ethanol plants will continue to be shut down or to have reduced production, and ethanol and other biofuels will likely continue to be severely undervalued in the market. To have the desired rehabilitative biofuels market effect, we cannot urge strongly enough the EPA to include in the final RFS rule due out in the coming weeks an additional 1.34 billion RVOs for 2020. This move will merely "stop the bleeding," so to speak. It will not restore the over 4 billion in lost ethanol demand from small refinery exemptions (SREs) EPA granted for compliance years 2016-2018. However, it will clearly

[1] U.S. Environmental Protection Agency, Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to Remand of the 2016 Standards; Supplemental Notice of Proposed Rulemaking, EPA-HQ-OAR-2019-0136; FRIL-10001-36-OAR), 84 Fed. Reg 208 57677-85 (Oct. 28, 2019) (to be codified at 40 CFR Part 80) Available at https://www.govinfo.gov/content/pkg/FR-2019-10-28/pdf/2019-23379.pdf.

and decisively tell all RFS stakeholders that there will be at least 15 billion gallons in net ethanol demand next year, thus setting the stage for the immediate and critical rehabilitation of the ethanol industry.

The comments below supplement the written comments I submitted on August 30, 2019 and the oral testimony I presented to the agency in Michigan on October 30, 2019 in response to the proposed rulemaking on the "Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to the Remand of the 2016 Standards, and Other Issues" ("the proposed rule"). I have included for your reference a copy of my August 30th comments as Attachment A to this letter. In those comments, I urged the agency to use its authority in this near-term rulemaking to issue a final rule setting out the 2020 renewable volume obligations (RVOs) that makes it unquestionably clear to the market that there will be at least a net 15 billion in ethanol demand for the 2020 compliance year. As stated throughout this letter, the NEB continues to believe that EPA must include this 2020 market demand assurance in the final RFS rule it will issue later this year.

In my previous comments to the agency on the proposed rule, I discussed the importance of EPA's consistent implementation of the RFS in accordance with the law as it is intended and the vital importance of a strong RFS to Nebraska's economy, environment, farmers, renewable fuel producers, consumers and rural communities. I also described my serious concern with EPA's implementation of the petitions it received from small refineries requesting relief from their annual RVOs for compliance years 2016-2018. I respectfully requested that the agency take measures during the current rulemaking period to ensure the final 2020 RVOs it issues will not be subject to retroactive waived gallon amounts below the RVO levels contained in the rule. Only by taking this decisive action and providing explicit assurance that there will be at least a net 15 billion gallons in ethanol demand for compliance year 2020 will EPA begin to correct the current market perception that the RVOs it issues are suggestions rather than obligations, as intended by the law. We believe this effect can only be achieved if EPA includes the requested additional 1.34 billion RVOs in the final rule.

The 85 SREs EPA granted for compliance years 2016-2018 has not only led to more than 4 billion gallons in ethanol demand loss, but has led to a significant value reduction in D6 RINs with no bottom in sight. EPA must take immediate action in the rule to tell the market that there will be at least a net 15 billion gallons in ethanol demand in 2020, even if the agency continues to grant SREs for the next compliance year at the same levels it has in the last three compliance years. In his August 22nd letter to you, President and CEO of the Renewable Fuels Association Geoff Cooper detailed the destruction to the biofuels industry from the 85 retroactive SREs this Administration has granted. His words below help illustrate the critical need for the EPA to take this immediate action to rehabilitate the biofuels market by correcting the market signals it sends through its implementation of the RFS. Getting the market signal right here is of paramount importance to revive investment, production and growth of RFS qualifying biofuels up to the statutory target levels.

> The U.S. ethanol industry has indeed been negatively impacted by the dramatic increase in SREs that have been issued by your Agency. U.S. ethanol consumption in 2018 was far below the level forecast by the U.S. Energy Information Administration (EIA) at the start of the year. Further, 2018 domestic ethanol consumption fell from 2017 levels—***the first year-over-year decline in 20 years***. Ethanol's share of U.S. gasoline consumption (the "blend rate") also fell in 2018 relative to 2017, ***likely the first-ever annual decline in the blend rate.***
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> These impacts are continuing in 2019. ***Domestic ethanol consumption is on pace to be 450 million gallons lower this year than initially expected by EIA***, ***which now "assumes growth in higher-level ethanol blends is limited in the near-term by recent Small Refinery Exemptions***…" Moreover, ***ethanol prices are severely depressed, profit margins have turned negative, corn use by ethanol plants is falling, and the U.S. ethanol industry is curtailing production***…

> [T]he total number of plants that have temporarily or permanently shuttered production since EPA began to massively expand the SRE program now stands at 15. Each of those facilities directly employed 40-50 workers and supported hundreds more jobs throughout the economy.
>
> In fact, ***in the week following EPA's August 9 announcement that 31 more SREs had been approved, ethanol prices plunged 18 cents per gallon (12 percent), corn prices fell 47 cents per bushel (11 percent), and RIN credit values dropped from the already-low level of 20 cents to just 12 cents (43 percent)*** [Emphasis added].[2]

The NEB appreciates the diligent efforts by the Administration to meet with biofuels industry leaders this fall to find an agreeable way to boost the 2020 RVOs so they will lead to a crucial market correction at this critical time for the biofuels industry. Those efforts illustrate that EPA and the Administration understand the significance of getting the final RVOs right in this year's rule that will drive next year's demand.

The NEB supported the reported verbal agreement reached during those meetings in September, whereby EPA would increase the 2020 RVOs by 1.34 billion gallons in the final rule. We believe that the final rule must include this increase as opposed to the proposed increase of only 770 million gallons contained in the supplemental for several reasons.

All RFS stakeholders are closely watching EPA's actions on this issue. The fact that news outlets have reported on the difference between the verbally agreed upon 1.34 billion gallons representing the three-year average of the number of gallons this Administration has ***actually waived,*** and the written proposed 770 million gallons representing the three-year average number of gallons the U.S. Department of Energy (DOE) ***recommended to have been waived*** only bolsters the importance that EPA include the 1.34 billion additional RVOs in the final rule. RFS opponents now know that when presented the DOE recommendations for waivers covering compliance years 2016, 2017 and 2018, the EPA each time made the choice to waive the recommended volumes plus an average of about 40 percent more gallons. The message the agency will send to the market if it moves forward with the proposed 770 million number is that the agency is picking the petroleum industry and RFS opponents over the biofuels and agriculture industries and is willing to risk the continued lack of confidence and weakening of the biofuels market.

In our view, if EPA chooses to move forward with the proposed additional 770 million RVOs, there is nothing EPA can do to signal a stable net 15 billion gallons in ethanol demand next year. Market confidence that could immediately drive new ethanol investment and production next year will be driven by the final RFS rule and informed by previous EPA actions, not mere words.

If EPA includes the additional 1.34 billion RVOs in the final rule, all RFS market stakeholders will have confidence that the 2020 ethanol demand will be at least 15 billion gallons, even if the EPA ends up granting retroactive SREs at the same average levels as it has over the last three compliance years. If EPA includes the additional 770 million gallons as proposed—even if the agency includes assurances that it will follow DOE's recommendations in the future—we believe market confidence will not be sufficiently restored to achieve the desired rehabilitative investment and production effects until RFS stakeholders see evidence that EPA will indeed follow DOE recommendations in the future. If next year is like this one, and since the main SRE issue concerns retroactively applicable waivers without reallocation, it may not be until late summer when the market will learn whether EPA followed DOE's recommendations concerning SREs covering the 2019 compliance year. Moreover, it may not be until mid-2021 when RFS stakeholders learn whether EPA followed DOE's recommendations concerning SREs covering compliance year 2020.

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[2] Letter from Geoff Cooper, President & CEO, Renewable Fuels Association to Andrew Wheeler, Administrator, U.S. Environmental Protection Agency re impacts of SREs on the ethanol industry (Aug. 22, 2019) (available at https://ethanolrfa.org/wp-content/uploads/2019/08/RFA-Letter-to-EPA-Administrator-Wheeler.pdf).

If this is the case, this evidence will come two years too late to have the effect of signaling to the market that the final RVOs issued in this year’s rule will actually play out to be the final RVOs and not subject to retroactive reductions. As I have repeatedly stated, the biofuels industry is at a crucial inflection point and EPA must take immediate action to restore market confidence in the final RVOs it issues.

In sum, I am calling on EPA to take the immediate corrective action requested in this letter and include in the final rule the additional 1.34 billion RVOs agreed to at the White House this fall. At this point, I believe this strong and decisive action is the only way for the EPA to honor its responsibility to carry out the RFS law as Congress intended.

Thank you for considering these comments. If you or your staff have any questions, please do not hesitate to contact me at 402-471-2941 or roger.berry@nebraska.gov.

Sincerely,

Roger Berry

Roger Berry
Administrator

ATTACHMENT A

TESTIMONY OF ROGER BERRY
ADMINISTRATOR, NEBRASKA ETHANOL BOARD
EPA FIELD HEARING
OCTOBER 30, 2019

Good morning. My name is Roger Berry. I am the Administrator of the Nebraska Ethanol Board, or the NEB. The NEB is an independent agency that works to ensure the ongoing stability and growth of the renewable fuels market in Nebraska.

Before I begin, I want to thank EPA for holding this hearing on its supplemental proposed rule. I do want to mention that Governor Ricketts could not be here today, but that he has already, or will be soon, submitting his comments on the supplemental proposed rule and the NEB supports them wholeheartedly.

Since I only have a few minutes to talk here, I will only briefly mention the significance to Nebraska's economy, environment, farmers, renewable fuel producers, consumers and rural communities, of an RFS that is implemented by the EPA in accordance to the law to help promote increased investment, growth and use of RFS-qualifying biofuels into the U.S. transportation fuel supply. The law as written and intended by Congress does create a careful market balance that achieves this end, but only when EPA takes great care to implement the law as closely to the statute as possible. In other words, the RFS works as intended when EPA issues annual RVOs that send a strong signal to the U.S. transportation fuel market that the volumes contained in that rule will match those in the statute to the extent possible and that they will not later be subject to retroactive changes.

We have seen since 2017 the devastation that occurs to renewable fuels stakeholders, including Nebraska's farmers and biofuel producers, when the RFS is implemented in a way that tells obligated parties that the final RVOs set for the following year are actually retroactively able to be reduced by small refineries, even if those small refineries are owned and therefore supported by the big oil majors that have enjoyed record profits since 2017. The price of RINs has declined to the point where obligated parties are no longer incentivized to blend actual biofuel gallons, instead opting to purchase the depressed, cheap RINs. This has led to numerous biofuel plants in the Midwest announcing that they are either slowing or shutting down production, thus also taking away vital value-added market opportunities for farmers who are trying to survive the current, multi-year cyclical downturn in agriculture.

EPA heard the outcry from industry after it announced that it would grant 31 more retroactive SREs this past August and we appreciated the work that President Trump and EPA undertook this fall to restore balance to the RFS. In short, the market balance could only begin to be restored if the Administration follows through in issuing a final rule that follows the generally understood deal announced on an October 4th phone call with the White House to take the three year rolling average of the gallons EPA has ***actually waived*** for compliance years 2016-2018 and does away with the never before heard of proposal to take the same average of the number of volumes DOE recommended to be waived (which was not actually followed by EPA). The proposal does nothing to restore the 4.2 billion gallons in devastating lost biofuel demand for compliance years 2016-2018. At a minimum, it is EPA's duty to take measures to prospectively account for likely, actual future retroactively waived gallons resulting from the agency's approval of SRE requests.

Thank you for listening to my comments. The NEB looks forward to submitting our written comments to the agency before the November 29th deadline.